

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant and Owner: Steve Dunn, Applicant
(for North Amherst Community Farm, Owner)
161A Pine Street, Amherst, MA 01002

Date Application filed with the Town Clerk: August 1, 2006

Nature of request: Petitioner seeks a Special Permit for two flag lots and for one of the access strips for a flag lot to exceed 400 feet in length, under Section 6.3 of the Zoning Bylaw.

Location of property: Pine Street, Map 5C, Parcel 29, R-N and R-LD/FC zone.

Legal notice: Published in the Daily Hampshire Gazette on August 30 and September 6, 2006, and sent to abutters on August 31, 2006.

Board members: Barbara Ford, Russ Frank and Hilda Greenbaum

Submissions: The applicants submitted the following documents:

- A plan prepared by Heritage Surveys, Inc., dated July 27, 2006, showing two flag lots;
- GIS plan showing the site with topography, dated August 1, 2006.

Town staff submitted the following documents:

- Memorandum from the Planning Department, dated September 11, 2006, commenting on the application;
- GIS plan showing the proposed flag lots in context with the entire North Amherst Community Farm (NACF) parcel, dated September 11, 2006;
- GIS plan showing zoning of the flag lots and the remaining NACF land, dated September 11, 2006;
- Results of the vote on Article 37 of the Annual Town meeting, Community Preservation Act – Agricultural Preservation Restriction, in which the Town appropriated money to aid in the purchase of the APR on the land under consideration.

Site Visit: September 11, 2006

At the site visit the Board was met by the applicant, Steve Dunn. The Board observed the following:

- The site is located on a heavily-traveled road in North Amherst;
- It consists of a large field surrounded by woods;
- The site is also surrounded by single-family homes and the Pine Street Co-housing development to the west which contains duplexes and Sunwood Pines to the north which is currently under construction (an Open Space Community Development consisting of attached condominium units);
- The proposed flag lots will be located along the eastern border of the site;
- The access strips for the flag lots will enter Pine Street at the north east corner of the site, near a slight curve in the road;
- The proximity of the nearby Lawrence Circle subdivision was noted.

Public Hearing: September 14, 2006

Ms. Ford disclosed that she had made a donation to the private trust that purchased the site. She stated that she does not have a conflict of interest with regard to this application.

Ms. Greenbaum disclosed that she had made a donation to the North Amherst Community Farm for acquisition of the site. She also stated that she does not have a conflict of interest with regard to this application.

At the public hearing Steve Dunn presented the petition. He made the following comments:

- He is the Clerk of the North Amherst Community Farm (NACF);
- The Dziekanowski's were the former owners of the property;
- NACF purchase the farm from them;
- The monetary value of the land for agricultural use is less than the monetary value for other uses;
- The state Agricultural Preservation Restriction program contributed \$320,000 towards the purchase of the site; the Town of Amherst contributed \$100,800 towards the purchase from the Community Preservation Act funds;
- The purchase of this land through the APR program will prevent the site from being developed;
- NACF is a non-profit land trust created to save the farm; its goal is to keep the land in farming in perpetuity, for farmers who practice sustainable organic farming;
- NACF has a debt remaining, even though it now owns the property;
- When the APR was created, some of the land was excluded in order to generate income to pay the loan; two flag lots were excluded from the APR along with one frontage lot on North Pleasant Street where the original farm house exists; the farmhouse is being used to house farm employees;
- The proposed flag lots on Pine Street are meant to be used for homes for the farmers who are farming the land;
- NACF will lease the farmland to an organization called "Simple Gifts Farms";
- David Tepfer is one of the farmers and one of the future purchasers of one of the flag lots;
- The site as a whole consists of 37 acres; 32 acres are tillable land;
- The flag lots excluded on the eastern part of the site have a gentle slope;
- The soil profile of the flag lots indicates that this land has the least valuable agricultural soil since it is dryer and sloping;
- The flag lots are also partially wooded;
- The lots have a nice view of the hills to the north.

Mr. Dunn went on to say:

- There are two farm families associated with the farm who do not have a home in the vicinity of the farm; NACF wishes to sell the flag lots to these farm families;
- NACF has not developed a site plan for the driveway(s) or the homes;
- NACF would prefer to have one driveway to serve the two lots since this would preserve the maximum amount of land for farming;
- The plan submitted to the Board meets the requirements of the Zoning Bylaw with respect to flag lots;
- The access strips are straight and 40 feet wide, with no angles;

- One of the access strips is 419.83 feet long which is about 20 feet longer than normally allowed by Section 6.3;
- The Board may allow an access strip in excess of 400 feet if certain criteria are met.

Mr. Dunn asked that the Special Permit be granted with the fewest restrictions possible in order to maintain the value of the flag lots. He explained that the NACF was trying to do the right thing to save agricultural land, to save the historic barn at the other end of the site, and to preserve the views from Pine Street by placing the building area of the flag lots far back from Pine Street.

Ms. Greenbaum asked if there would be any filling. Mr. Dunn stated that there is no filling planned. He asked that the Special Permit process proceed in a timely manner to allow construction of a foundation before the ground freezes this winter.

Ms. Ford asked about drainage issues vis-à-vis the driveway(s). Mr. Dunn stated that there will be no drainage issues since the site is dry and gently sloping. He also stated that there are no wetlands in this part of the site.

The Board asked if the two flag lots would be served by a single common driveway. Mr. Dunn stated that this was the intent of the NACF. The Board noted that Pine Street is a busy road and that one driveway entrance would be preferable to two.

Bruce Coldham of 155 Pine Street stated that he has been working with the NACF. He reviewed the criteria set forth in Section 6.33 of the Zoning Bylaw with respect to the length of access strips. He noted that the Zoning Board of Appeals may allow an access strip in excess of 400 feet upon a finding that certain criteria are met. He made the following statements:

- [Section 6.330] - The 20 foot excess length of one of the access strips will not have a substantial detrimental impact on the declared intent and purposes of any overlay district because, by siting the building area of the lots where they are sited and creating a long access strip, valuable farmland is preserved, in accordance with the purpose of the Farmland Conservation Overlay district. In fact there is a positive impact on the ability of the land to be farmed.
- [Section 6.331] - The 20 foot excess length of one of the access strips will not create an undue safety hazard because the access strip is straight, clear and unencumbered.
- [Section 6.332] - There will not be a substantial adverse environmental impact on groundwater quality, wetlands, significant wildlife habitat, prime farmland or other environmentally sensitive resources because the site is served by town sewer and there are no wetlands on this part of the site and no protected species in the area.
- [Section 6.335] - The 20 foot excess length of the access strip will not remove, destroy or irrevocably alter significant historical, archeological and/or cultural resources because, by placing the houses far back on the site, the natural features and views will be preserved.

Ms. Greenbaum asked about access for emergency vehicles and whether a fire truck could get in and out of the site. Ms. Ford commented that a single driveway would result in economical use of the land. She suggested a turnaround close to the street so that someone who turns in to the driveway would not need to back out onto Pine Street. She also noted that the Board would require that a plan for the driveway be submitted.

David Tepfer of 22 Knight Street, Belchertown, one of the farmers who will farm the land, stated that he is a partner in Simple Gifts Farm. He plans to buy one of the flag lots. The farmers intend to farm as much of the site as possible. They also wish to have a single driveway to serve both lots. There will be a small play yard and lawn around each house. They may plant fruit trees and a blueberry patch.

Ms. Ford asked about a long-term agreement between the farmers and NACF. Mr. Tepfer stated that there would initially be a five-year lease and that if things worked well the farmers would sign a 99-year lease.

Mr. Dunn noted that the NACF would have the “right-of-first-refusal” on the flag lots, if the farmers decided to sell them.

Ms. Greenbaum asked if the electrical and other utilities would be placed underground. Mr. Tepfer stated that all of the utilities would be placed underground. The Board requested that all of the utilities be shown on the site plan that would be submitted prior to building permits being issued.

Ms. Ford asked if the state and the Town of Amherst had agreed with the proposed location for the flag lots as the best location.

Mr. Dunn stated that the state had approved the APR with the flag lots excluded, as shown on the plan. At the time, the state had noted that the area around this property had a dense population and thus constituted a high priority for approval of an APR.

Ms. Ford noted that the soils in the area of the flag lots were the least valuable for farming. She asked if a deed restriction was proposed for the flag lots so that they would always be available for those who were farming the land.

Mr. Tepfer stated that Equity Trust, the financial entity that was advising NACF, had recommended against a deed restriction since such a restriction would limit the ability to borrow against the land.

Mr. Frank noted that NACF maintained a “right-of-first-refusal” over the flag lots.

Mr. Coldham stated that the parcel is surrounded by housing so there are a lot of opportunities for farm families to live near the land.

Mr. Dunn noted that farm families need to have a way to build equity. The proposed arrangement would allow this.

Ms. Weeks stated that the flag lots meet the requirements of Section 3.283 of the Zoning Bylaw for residential development in the FC district in that the body of each of the lots, exclusive of access strip, is 30,000 square feet. Ms. Ford noted that the memorandum submitted by the Planning Department, which is incorporated by reference into the record of this hearing, contains the information relative to the size of the flag lot. Ms. Ford also noted that only one of the access strips was excessively long. She invited comments from the public.

Mr. Coldham requested that the Board not include a condition requiring that the flag lots be designated for single-family use only. The Board discussed the fact that a two-family house would require a Special Permit and that ultimately the Board has control of this issue, without imposing a condition restricting the use to single-family homes.

Ms. Greenbaum MOVED to close the evidentiary portion of the public hearing. Mr. Frank SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Discussion

At the public meeting the Board discussed the conditions that they would impose if they granted the petition. The Board also discussed its findings.

Public Meeting – Findings:

Under Zoning Bylaw Section 6.3 the Board found that:

- 6.32 and 3.2832 – The area of the proposed flag lots will be 30,000 square feet, exclusive of access strip, which meets the requirements for flag lots in the Farmland Conservation district.
- 6.33 – The access strip for each flag lot will have a street frontage of 40 feet. The length of the access strips for one of the lots is 204.10, which is less than the 400 feet allowed. The length of the access strip for the second lot is 419.83 feet, which is 19.83 feet longer than the 400 feet allowed. However, the criteria in Sections 6.330, 6.331, 6.332, 6.333 and 6.335 of the Zoning Bylaw for granting permission for an access strip in excess of 400 feet have been met, for the reasons presented by Mr. Coldham during the public hearing.
- 6.34 – The width of the building area will exceed the distance normally required for street frontage in the R-N district, where the street frontage lies, i.e., 120 feet.
- 6.35 – The building area will be capable of containing a circle whose diameter is greater than the street frontage required in the R-N district, i.e., 120 feet.
- 6.36 – There are only two flag lots adjacent to each other at the street line.
- 6.37 – Access to the lots will meet the requirements of Section 7.7 because a condition of the Special Permit requires that a site plan be submitted for the common driveway, to be approved by the Board at a public meeting.
- 6.38 – There will be only two flag lots created from the original parcel.

Under Zoning Bylaw Section 10.38 the Board found that:

- 10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the proposed housing for the farm families is compatible with the neighborhood which consists primarily of residential uses in the form of single-family houses, duplexes and a condominium development and the land being used for the flag lots will be the least viable agricultural land on the parcel.
- 10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because exterior lights will be downcast, a drainage plan for the driveway will be submitted for approval by the Board and the land is an upland area and is not prone to flooding.
- 10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because there will be only one common driveway to serve the two flag lots and there will be turnarounds created for passenger vehicles as well as for emergency vehicles which will eliminate the need to back out onto Pine Street.
- 10.385 – The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site because the exterior lights will be downcast, a drainage plan will be submitted for approval and the uses are typical for the neighborhood.
- 10.387 – The proposal provides convenient and safe vehicular and pedestrian movement within the site because there will be a single, common driveway to serve both flag lots and the driveway will have turnaround areas for emergency vehicles and passenger vehicles.

- 10.391 - The proposal protects, to the extent feasible, unique or important natural, historic or scenic features because, by placing the building areas of the flag lots far back on the site, the proposal ensures that the houses will not obscure scenic views of the farmland from Pine Street. The proposal also helps to preserve the rich farmland of North Amherst, by providing home sites for farmers and by providing income to help to pay for the purchase and preservation of the farmland property.
- 10.393 - The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because exterior lighting will be downcast.
- 10.394 - The proposal avoids, to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes and wetlands because there are no steep slopes, floodplains or wetlands, the grade changes are gentle and scenic views will be protected by siting the houses far back from the road.
- 10.398 - The proposal is in harmony with the general purpose and intent of the Zoning Bylaw for the reasons enumerated above.

Public Meeting – Zoning Board Decision

Russ Frank MOVED to approve the application with the conditions as drafted in the public meeting. Hilda Greenbaum SECONDED the motion. The Board VOTED unanimously to approve the application with conditions.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit with conditions, under Section 6.3 of the Zoning Bylaw, to create two flag lots and to allow an access strip for one of the flag lots in excess of 400 feet in length, as applied for by Steve Dunn for North Amherst Community Farm, at Pine Street (Map 5C, Parcel 29, R-N and R-LD/FC zone).

BARBARA FORD

HILDA GREENBAUM

RUSSELL FRANK

FILED THIS _____ day of _____, 2006 at _____,

in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2006.

NOTICE OF DECISION mailed this _____ day of _____, 2006
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2006,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, under Section 6.3 of the Zoning Bylaw, to create two flag lots and to allow an access strip for one of the flag lots in excess of 400 feet in length, as applied for by Steve Dunn for North Amherst Community Farm, at Pine Street (Map 5C, Parcel 29, R-N and R-LD/FC zone), with the following conditions:

1. There shall be a single, common driveway to serve the two flag lots.
2. A site plan for the common driveway shall be submitted for review and approval by the Board at a public meeting prior to the issuance of a building permit for the first house. The site plan shall show grading and drainage, underground utilities, a turnaround for emergency vehicles designed in conformance with the requirements of the Fire Department, a turnaround close to Pine Street for passenger vehicles, the surface material for the driveway and proposed plantings and proposed site lighting, if applicable. The applicant shall consult with the Fire Department when preparing the plan for the driveway. The driveway shall be built in accordance with the site plan described herein.
3. A common driveway maintenance agreement shall be submitted for review and approval by the Board at a public meeting prior to the issuance of a building permit for the first house.
4. All utilities shall be placed underground.
5. A site plan showing the location of each house shall be submitted for review and approval by the Board at a public meeting prior to the issuance of a building permit for each house.
6. The site plan for each house shall include exterior lighting, if applicable. All exterior lighting shall be downcast.
7. Street address signs shall be installed in accordance with the requirements of the Fire Department and shall be visible and readable by emergency vehicles. Such address signs shall not obstruct the vision of those entering or exiting the common driveway.
8. This project is subject to Section 14 of the Zoning Bylaw, Phased Growth. The development authorization date shall be October 2006 for both flag lots.

BARBARA FORD, Chair Pro Tem
Amherst Zoning Board of Appeals

DATE